LUTHER D. MOSS

IBLA 85-252 Decided October 11, 1985

Appeal from a decision of the White River Resource Area Office, Bureau of Land Management, declaring a preferential right holder the successful bidder at a sale of public lands. C-37808/7.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Sales--Public Sales: Preference Rights

Under 43 U.S.C. § 1713(f) (1982) and 43 CFR 2711.3-2, the Bureau of Land Management is authorized to offer land for sale by a modified competitive bidding procedure which gives an adjacent landowner a preference right to purchase land by meeting the highest bid. A bidder who fails to object to such a procedure during the time provided by a notice of sale cannot seek to have the procedure changed after the sale has taken place.

APPEARANCES: Luther D. Moss, pro se; Donald Roberts, Acting Area Manager, White River Resource Area, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Luther D. Moss has appealed from the December 11, 1984, decision of the White River Resource Area Office, Bureau of Land Management (BLM), declaring W. C. Moore the successful bidder for parcel C-37808/7 at a sale of public lands held on December 5, 1984, in Meeker, Colorado. The notice of that sale expressly provided: "Mr. W. C. Moore of Meeker, Colorado 81641, owner of all adjacent property, will have a preference right to purchase the land by meeting the highest bid within a 30 day period following the date of sale." The parcel attracted two bids: appellant's bid of $1,111.11 and Moore's bid of $500. Moore exercised his option to meet the high bid, and appellant contends BLM erred in giving Moore this preference right.

According to the environmental assessment prepared by BLM in contemplation of the sale, most of this 4.54-acre parcel lies adjacent to Moore's land and is a part of an improved pasture used by Moore and his predecessor in interest for a number of years. The east 30 feet of the parcel lies under a county road. There is a fence along the road, a buried telephone cable, and an overhead powerline. A portion of a stockpond built by Moore covers a small area of the parcel.

Appellant objects to granting Moore a preference right based on unauthorized use and alleges that BLM failed to give appropriate concern to the needs of others. Appellant suggests that denying Moore a preference right would cause him no hardship because the land has limited grazing capacity.

Appellant states he is engaged in the real estate business and has clients who frequently seek small parcels of undeveloped land at affordable prices. Appellant contends there is a strong demand for smaller parcels because State law prohibits conveyance of private lands and parcels of less than 35 acres or retention of less than 35 acres without approval of a subdivision and plat by the local authority. Appellant hypothesizes that small parcels of unimproved land have a higher per-acre value than parcels of 35 acres or more because subdivision and development of those larger parcels in compliance with state and local laws add costs which the developer must pass to the purchaser. The small tracts of public lands offered for sale are not subject to such costs.

Appellant's arguments provide no basis for overruling BLM's decision to grant Moore a preference right to meet the highest bid. His hypothesis necessarily implies that bidders would be willing to pay a substantial premium for the subject parcel, so long as they could realize some savings from the price of a similar parcel within a formal subdivision. If appellant's hypothesis were correct, the parcel would have drawn a bid by appellant or others that moore would have found uneconomic to match.

The results of the sale itself, however, do not corroborate appellant's contentions. The sale attracted no bidders other than appellant and the adjacent landowner. Even though the amount of the high bid (appellant's) was more than twice BLM's appraised value for the parcel, that bid still corresponded more closely to per acre valuations of large tracts than to alleged per-acre valuations of smaller parcels. In short, appellant's own bid belies his arguments. His bid does not correspond to the value of a parcel having the characteristics appellant now attributes to the subject tract. 1/

1/ In its answer to appellant's notice of appeal, BLM stated that appellant had provided no evidence in support of his claim of having clients interested in buying small tracts. Appellant's response included a reference to three transactions involving parcels of land of similar size reflecting land values of $11,500, $16,700, and $17,200. These transactions appear to involve land within established subdivisions, and two of them do not appear to have been at arm's length. Although BLM's appraisal report for the parcel acknowledged at page 42 "an element of potential for homesite use," the parcel is also characterized as "a scattered remnant of unconforming shape and size," id., which precludes the parcel from realizing its highest value. Id. at 45.

Appellant refers to a number of local government entities that might have use for the land, and states he does not believe adequate consideration has been given to those local entities. BLM, however, states it corresponded with local government entities concerning parcels involved in the sale, and asserts that copies of the notice of realty action were mailed to various public officials, as well as to the local clearing house for circulation to State and Federal agencies, interested individuals, and interested groups on the clearing house's mailing list. No comments were received.

Appellant states the county road department may have acquired permanent easement rights by construction and maintenance of the county road adjoining the parcel and that no mention of this was made in the notice of realty action. The Board may order BLM to cancel a sale if BLM failed to notify prospective purchasers of such a material condition that might have affected the bidding. See Riverside Livestock Co., 15 IBLA 170 (1974); Hazel Ingersoll Hall, 4 IBLA 177 (1971). However, the sales prospectus states the patent would include a reservation for the county road.

In response to appellant's argument that BLM should not recognize a preference right based on unauthorized use, BLM states that the fence was constructed more than 50 years ago and is considered as a facility usual for a county road. BLM elected the use of modified competitive bidding for the parcel because it would afford equitable consideration to the adjacent landowner, recognizing his historic use and existing improvements. BLM's decision was based on the landowner's historical use of the parcel, consideration of the existing improvements, and consideration of the compatibility with adjacent land uses and possible dislocation of the existing user.

BLM also noted that the parcel is not located near urban expansion areas and that the value of the land in the past 2 years has only moderately increased. No comments were received from any individuals or groups expressing a need for or interest in the parcels of land offered for sale, and the Bureau construed this absence of comments as a lack of interest. The only bids tendered were those submitted by appellant and Moore.

[1] Appellant's contention that Moore should not be given a preference right because of his unauthorized use provides no basis for the reversal of the decision below. Appellant's correct observation that one cannot acquire title to Federal land by adverse possession bears no relevance to this issue. BLM proposes to convey the land to Moore by patent after receiving an amount deemed to represent the fair market value of the land. Under 43 U.S.C. § 1713(f) (1982) and 43 CFR 2711.3-2, BLM is authorized to offer land for sale by a modified competitive bidding procedure, giving an adjacent landowner a preference right to purchase the land by meeting the highest bid. Under prior legislation, Congress had given such a preference right to adjacent landowners 2/ and, by providing for modification of competitive bidding

2/ In section 14 of the Act of June 28, 1934, ch. 865, 48 Stat. 1274, Congress amended legislation authorizing sales of certain land to provide that "owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price." This legislation remained in effect until repealed by section 703(a) of FLPMA, P.L. 94-579, 90 Stat. 2790 (1976).

in favor of adjacent landowners under 43 U.S.C. § 1713(f) (1982), Congress made clear that the new legislation was not intended to abrogate the prior policy favoring such preference rights.

Although appellant has offered a number of reasons why he objects to the sale of the land to the preference right holder, we consider these objections untimely. The notice of realty action expressly provided for a period of 45 days from the date of the notice in which to submit comments. The notice stated that any adverse comments would be evaluated by the district manager, who may vacate or modify the realty action and issue a final determination. When appellant submitted his bid in accordance with the provisions of the notice without filing an objection, he accepted the terms and conditions of the sale, including the provision for modified competitive bidding. A bidder who fails to object to such a procedure during the time provided by the notice of sale cannot seek to have the procedure changed after the sale has taken place. See, e.g., Anadarko Production Co., 66 IBLA 174 (1982), aff'd, Anadarko Production Co. v. Watt, No. 82-1278 (C.D. N. Mex., Nov. 4, 1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge